

UNITED STATES OF AMERICA,
Plaintiff,
v.
(2) FREDDY JOSE MARVAL-RIVERO
Defendant,

TO THE HON. PEDRO A DELGADO HERNANDEZ
US DISTRICT COURT JUDGE

On September 21, 2020, the Government filed a Motion Requesting the Court to make a pre-trial jurisdictional determination. (ECF#29) The United States requests a determination that the defendant's vessel is "subject to the jurisdiction of the United States" within the meaning of the Maritime Drug Law Enforcement Act (MDLEA), 46 U.S.C. §§ 70501 et seq. (ECF#29)

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Secretary of State or the Secretary's designee, as per 46 U.S.C.
§ 70502(c)(2). (ECF# 29, p. 5)

Mr. Marval respectfully alleges that the Maritime Drug Law Enforcement Act, 46 U.S.C. §70502(c)(2)¹, violates Article III of the US Constitution and Marval's Sixth Amendment Right to a jury trial by giving dispositive weight to the executive branch's assertion that jurisdiction exists.

RELEVANT FACTS

On October 19, 2019, while on routine patrol, a Marine Patrol Aircraft (MPA) located a Go-Fast Vessel (GFV) heading north at 20kts 60NM North of La Guajira, Colombia. Upon detection by the MPA, the GFV altered course south and began to jettison packages. The MPA reported this information to the **Dutch Navy Vessel** HNLMS GRONINGEN with a United States Coast Guard Law Enforcement Detachment (LEDET). The **Dutch Navy Vessel** HNLMS GRONINGEN deployed their small boat, with US LEDET members onboard. Once within visual distance from the GFV, the **Dutch Navy Vessel** small boat engaged the blue light announcing law enforcement presence. The GFV was underway and the **Dutch Navy Vessel** small boat had to give pursuit of the GFV, reaching speeds of 20+ knots. While giving chase, law enforcement

¹ "Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States . . . (A) may be obtained by radio, telephone, or similar oral or electronic means; and (B) *is proved conclusively by certification of the Secretary of State or the Secretary's designee.* (emphasis added).

1 observed packages being jettisoned from the GFV. Throughout the
2 pursuit, LEDET members were giving verbal commands for the GFV
3 to halt. Ultimately, the GFV came to a stop.

4 The Dutch Navy Vessel **(This important fact totally omitted**
5 **by the Dept. of State Certifying Officer)** deployed a small Dutch
6 Navy boat with US Coastguard personal and they proceeded to
7 board the defendant's vessel. The master of the GFV made a
8 verbal claim of Venezuelan nationality for the vessel and its
9 crew. This apparently to the US Coastguard teams that are on a
10 foreign nation vessel, operating with them presumably in a
11 technical assistance capacity.
12

13 We do not know if it is the U.S.A. or the **Dutch Navy**
14 contacted Venezuela. On October 19, 2019, the recognized
15 government of Venezuela waived its primary right to exercise
16 jurisdiction over the GFV and its crew and consented to the
17 enforcement of United States law.

18 A second **Dutch Navy small boat** with presumably **Dutch Navy**
19 **Personnel** was deployed to recover the jettisoned packages. **The**
20 **Dutch Navy recovered** a total of eleven (11) bales of contraband
21 were recovered. **The Dutch Navy Law enforcement** seized
22 approximately 330 kilograms of cocaine. A field test of a sample
23 resulted positive to cocaine. The second small **Dutch Navy** boat
24 also recovered satellite phones, cellular phones, documents, and
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1 wallets. Ion scan swipes on the vessel yielded positive to
2 cocaine. All defendants were arrested in international waters.

3 On November 6, 2019, a federal grand jury returned an
4 indictment against all three defendants charging them with
5 Aiding and Abetting in the Possession with Intent to Distribute
6 a Controlled Substance on Board a Vessel Subject to the
7 Jurisdiction of the United States. ECF No. 19.

8 On **March 5, 2020**, Coast Guard Commander David Bartram, the
9 U.S. Secretary of State's authorized designee under the MDLEA,
10 certified under penalty of perjury that the Government of
11 Venezuela authorized the United States to exercise jurisdiction
12 over the Go-Fast Vessel, its cargo, and its crew.
13

14 ARGUMENT

15 Mr. Marval challenges the district court's subject-matter
16 jurisdiction, arguing that the Maritime Drug Law Enforcement Act
17 delegates to the Executive Branch, in violation of the
18 constitutional separation of powers (Article III), the power to
19 manufacture federal jurisdiction over vessels in international
20 waters, *regardless of whether they are in fact stateless, or*
21 *even as in the present case, in which the record belies that*
22 *determination.*
23

24 The MDLEA, disables the adversary system by requiring
25 courts to accept the Executive Branch's assertion that subject-
26

1 matter jurisdiction exists. It thus requires this Court to
2 accept unquestioningly facts whose veracity is essential to the
3 existence of an Article III case or controversy. See United
4 States v. Cardales-Luna, 632 F.3d 731 (CA1 2011)² as to the
5 conclusive nature of the Secretary of State Certification.
6 *Cardales-Luna*, wrongfully deprives the district court of its
7 obligation to *sua sponte* determine whether the jurisdictional
8 requirements of the MDLEA had been met.

9 The Supreme Court in Northern Pipeline Construction Co. v.
10 Co., 458 U.S. 50 (1982), and United States v. Klein, 80 U.S. (13
11 Wall.) 128 (1872)), delineated the federal courts' exclusive
12 area of duty and authority, establish that Congress' revision to
13 the MDLEA intruded on judicial authority. In *Klein*, the
14 plaintiff sued the United States, as administrator of the estate
15 of V.F. Wilson, for compensation for cotton seized from Wilson
16 during the Civil War. Though he had aided the rebellion, Wilson
17 availed himself of an amnesty by taking an oath of allegiance to
18 the United States in 1864. He thereby received a presidential
19 pardon. The Supreme Court had earlier ruled that the property of
20 a pardoned rebel was purged of its owner's crimes. See United
21 States v. Padelford, 76 U.S. (9 Wall.) 531 (1870). Accordingly,
22 the Court of Claims awarded Wilson's estate \$125,300. While the

25 ² In *Cardales-Luna*, Appellants did not make the argument that Mr. Marval is presenting to this Court. Mainly, that
26 MDLEA's certification procedure violates separation of powers by unconstitutionally delegating the jurisdiction
determination to the executive branch, as opposed to the judiciary.

1 government's appeal was pending, Congress enacted a statute
2 similar to the MDLEA. It provided (1) that no presidential
3 pardon or amnesty was admissible in evidence against the United
4 States in the Court of Claims, (2) that any such pardon or
5 amnesty in fact constituted "conclusive evidence in the Court of
6 Claims, and on appeal, that such person did take part in, and
7 gave aid to the rebellion," and (3) that "on proof of such
8 pardon ... the jurisdiction of the court shall cease, and the
9 suit shall be forthwith dismissed." See 80 U.S. at 143-44.

10
11 The Supreme Court held that the statute exceeded Congress'
12 authority because it stripped the courts of the ability to
13 decide cases and dictated the effect they had to give certain
14 evidence: "[T]he court is forbidden to give the effect to
15 evidence which, in its own judgment, such evidence should have,
16 and is directed to give it an effect precisely contrary. We must
17 think that Congress has inadvertently passed the limit which
18 separates the legislative from the judicial power." **Id. at 147.**

19
20 The MDLEA suffers from the identical defect as the statute
21 in Klein. It, too, gives "conclusive" weight to a document
22 created by the Executive Branch that, in turn, determines the
23 jurisdiction of Article III courts. Congress lacks the power to
24 take away the Judicial Branch's authority to decide cases and
25 assign it to the Executive Branch.

1 *Northern Pipeline* reaffirmed that Congress cannot delegate
2 deciding cases, including making factual findings, to an entity
3 that is not an Article III court. That case held that the
4 Bankruptcy Act of 1978 violated Article III by requiring certain
5 lawsuits to be decided, even over objection, by bankruptcy
6 courts rather than district courts. 458 U.S. at 87 (plurality),
7 91 (concurrence). The Court understood that, if Congress could
8 assign the duty of deciding cases or controversies to a non-
9 Article III entity, it could end impartial adjudication and,
10 hence, the Rule of Law itself: "The Federal Judiciary was ...
11 designed by the Framers to stand independent of the Executive
12 and Legislature – to maintain the checks and balances of the
13 constitutional structure, and also to guarantee that the process
14 of adjudication itself remained impartial." 458 U.S. at 58.

16 The MDLEA is a more egregious violation of Article III than
17 the Bankruptcy Act of 1978. The Bankruptcy Act's fatal defect
18 was that it allowed judges who did "not enjoy the protections
19 constitutionally afforded to Art. III judges" to decide cases.
20 458 U.S. at 60. The MDLEA assigns the power to find
21 jurisdictional facts to a party in a criminal case. While the
22 Bankrupt Act created a mere risk of partiality, the MDLEA
23 guarantees it.
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1 The MDLEA goes even further and requires federal courts to
2 exercise jurisdiction even when there is proof that the boat in
3 question is not a "covered vessel." This violates the well-
4 established Article III corollary that the parties to a suit
5 cannot create jurisdiction. Insurance Corp. of Ireland Ltd. v.
6 Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982)
7 ("[N]o action of the parties can confer subject-matter
8 jurisdiction upon a federal court."); People's Bank v. Calhoun,
9 12 Otto (102 U.S.) 256, 260-61 (1880) ("[T]he mere consent of
10 parties cannot confer upon a court of the United States the
11 jurisdiction to hear and decide a case."). It follows that,
12 contrary to what the MDLEA purports to authorize, the Executive
13 Branch cannot create jurisdiction with a certificate. The
14 prosecution has the burden in every case of proving jurisdiction
15 exists as a matter of fact.

17 Criminal proceedings exist to require prosecutors to prove
18 the facts on which convictions depend using fair methods.
19 Congress, it follows, cannot tell federal judges that they have
20 to accept Executive Branch assertions as truths without
21 impermissibly invading the Judicial Branch's exclusive area of
22 sovereign authority. If the revised MDLEA is constitutional,
23 nothing stops Congress from passing a statute that says,
24 "Jurisdiction is conclusively established in the federal courts
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1 whenever any federal prosecutor certifies that there is
2 jurisdiction."

3 The revised MDLEA impermissibly encroaches on the core
4 judicial function of deciding cases. The revised MDLEA is an
5 unconstitutional usurpation of judicial power by the political
6 branches. Here the government wants to preclude discovery as to
7 the court jurisdiction in case where the certification is silent
8 as to the fact that it was a Dutch Navy Foreign Vessel that
9 arrested the Defendants and that seized the drugs.

10 WHEREFORE, Mr. Freddy Jose Marval-Rivero respectfully
11 request that the Indictment be dismissed, as the Maritime Drug Law
12 Enforcement Act, 46 U.S.C. §70502(c)(2), violates Article III of
13 the US Constitution.
14

15 In San Juan, Puerto Rico, September 22, 2020.

16 S/RAYMOND L. SANCHEZ-MACEIRA
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19 COUNSEL FOR DEFENDANT
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22 TEL. 787-721-3370/ FAX 787-721-4706

23 CERTIFICATE OF SERVICE

24 I Hereby Certify: That on September 22, 2020, I
25 electronically filed the foregoing with the clerk of the court
26 using CM/ECF system which will send notification of such filing
to the following: US. ATTORNEY OFFICE

1 In SanJuan P.R. September 22, 2020

2 S/RAYMOND L. SANCHEZ-MACEIRA
3 USDC NO. 211405
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